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C O N F I D E N T I A L VIENNA 002996

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STATE FOR L AND EUR/AGS

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TAGS: PHUM PREL AU

SUBJECT: ENGAGING WITH AUSTRIA ON THE PRESIDENT'S INITIATIVES ON TERRORIST DETAINEES

REF: STATE 146996

Classified By: Deputy Chief of Mission Scott F. Kilner. Reasons: 1.4 (b) and (d).

¶1. (U) In response to reftel, Ambassador has engaged in a public affairs initiative to publicize and promote the President's policy on detainees. At the same time, Ambassador and DCM have discussed the issue with key Austrian government contacts.

¶2. (U) Ambassador incorporated reftel public diplomacy themes in a major speech to mark the anniversary of the September 11 attacks. She also conveyed these themes in multiple speeches to university groups and in a background discussion with the editors of Austria's major newspapers.

¶3. (C) DCM discussed reftel points on September 13 with Austrian MFA Legal Advisor Ferdinand Trauttmansdorff, a leading player in the U.S.-EU dialogue on detainees that began under the Austrian EU Presidency early this year. Trauttmansdorff noted that the development of new frameworks for detention standards, interrogation methods and trials of suspects would help promote rational discussion, even if they drew criticism. He said he would do his best to present the U.S. initiatives in a positive way.

¶4. (C) Trauttmansdorff said a key question was whether the war against al-Qaeda could win international acceptance as a war in the legal sense. EU views on this point, he reported, were "mixed and divergent." Generally, EU experts accept certain elements of the situation as constituting an "armed conflict." However, Trauttmansdorff said, no officials within the EU -- including the UK and Denmark -- see the situation as a general armed conflict. The majority of EU countries further see the ongoing struggle as requiring the application of humanitarian law as a part of international human rights law. The problem is that there is divergence in the details.

¶5. (C) Trauttmansdorff further argued that, if one accepts the situation as a conflict in a legal sense, the concept of "unlawful combatants" does not find recognition because it is not part of the Geneva Conventions. According to the Geneva Conventions, he said, it is lawful to kill the enemy in a war. However, the enemy must be recognizable as such, and not just "suspects" who may (or may not) be part of enemy forces.

¶6. (C) Trauttmansdorff stressed that credibility is a big issue in the fight against terrorism. The Western nations represent a community of values which must not be tarnished in the fight against terrorism. Europeans face the same problems as the U.S. regarding terrorism, and in fact, have long faced terrorism on their own territory. If one considers democracy as our guiding principle, he argued, we

could not ignore the requirements of human rights and humanitarian law. It is not cowardice on the part of Europeans, he said, to focus on these points.

¶7. (C) Concerning Common Article 3 of the Geneva Conventions, Trauttmansdorff claimed that there is a body of precedent that represents a clear requirement to provide the same "minimum standards" to detainees as we give our own worst criminals. These standards are quite specific, he argued, and embodied in the U.S. Uniform Code of Military Justice.

¶8. (C) Trauttmansdorff said the EU wanted to be supportive of U.S. initiatives in this area. He said it is important that we minimize differences in transatlantic attitudes.

Kilner